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IN THE

Supreme Court of the United States

October Term, 1970

No. 1347

FAIRVIEW DEVELOPMENT, INC.,
Appellant,

v.

CITY OF FAIRBANKS,
Appellee.

UPON APPEAL FROM THE JUDGMENT OF THE
SUPREME COURT OF ALASKA

MOTION TO DISMISS

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MOTION TO DISMISS

Appellee hereby moves that this appeal be dismissed pursuant to Rule 16 of the Rules of the Supreme Court of the United States on the ground that there is no jurisdiction in this court either on appeal or for certiorari.

Appellant alleges that the court below applied Section 7 of Ordinance No. 1068 of the City of Fairbanks (cited on page 2 of the Jurisdictional Statement herein) and by State action impaired obligation of a contract of appellant and denied appellant the equal protection of the laws. These allegations are not supported by the record as shown hereafter.

QUESTION OF IMPAIRMENT OF THE OBLIGATION OF CONTRACT

The Supreme Court of Alaska in its opinion entered herein (see Appendix B, Page A-2 of Jurisdictional Statement) affirmed the judgment entered below on the basis of the following statement (Page A-5, Jurisdictional Statement):

> "Study of the record including the trial court's memorandum opinion and order, which furnished the bases for the formal findings of fact and conclusions of law which were subsequently entered, convinces us that the judgment below should be affirmed. More particularly, we hold that the trial court's findings of fact underlying its construction of the lease phrase 'taxing limits' were not clearly erroneous. In light of these findings of fact, we further hold that the superior court's construction of the phrase 'taxing limits' and its conclusion of law entered in conformity with this construction should be affirmed."

The Judgment of the trial court (Appendix C, Page A-6 of Jurisdictional Statement) was based on the trial court's Findings of Fact and Conclusions of Law (Appendix D, Page A-8 of Jurisdictional Statement) in which the trial court found as follows (Page A-15 of Jurisdictional Statement):

> "(c) That it was the intention of the parties bargaining for the lease that Fairview would receive a lease to the land for 75 years and the furnishing of utilities including streets, sidewalks, etc. to the leased premises and that the City would receive annual ground rent, the advantage of a housing development and the benefits of a substantial source of revenue for taxes on the improvements over a long period of years.
>
> "(d) The inclusion of Paragraph No. 8 of the written lease is an act on the part of the parties expressive of what was being bargained for. The phrase 'taxing

> limits' in light of this then existing intention of the parties to provide the City with a source of revenue is held to refer to any restriction of limitation on the City's taxing power and not merely a geographical limitation.
>
> "(e) The lease contract obliges Fairview to pay taxes on the improvements in accordance with the provisions of Paragraph 8."

Based on these findings of fact, the conclusions of law made by the trial court (Page A-16 of the Jurisdictional Statement) were:

> "II. Subparagraph 8 of the lease where it refers to taxing limits of the City of Fairbanks refers to any restriction or limitation on the City's taxing power and and not merely a geographical limitation.
>
> "III. The contract between the parties obliges plaintiff to pay taxes on the improvements in accordance with the provisions of Paragraph 8."

It is clear that the decisions of the courts below were based on findings of fact interpreting the contract between Appellant and Appellee in order to carry out its intent, thus holding as a fact that the section of the ordinance complained of enforced, rather than impaired, the obligations of the contract. Had the section of the ordinance complained of been omitted and the property of Appellant administratively shifted from the personal property tax roll to the real property tax roll, the same questions would have arisen, and the decisions would have been the same. The existence of the ordinance provision had no bearing on the ruling in this case.

As authority for the proposition that municipal ordinance is an exercise of legislative power falling within a contract clause, Appellant (at Page 8 of the Jurisdictional Statement) cites *St. Paul Gas Light Co. v. St. Paul*, 181

U.S. 148, 45 L.Ed. 788, which case goes on to state at Page 149:

> "When the substantial scope of this provision of the ordinance is thus clearly understood, it is seen that the contention here advanced of impairment of the obligations of the contract arising from this provision of the ordinance reduces itself at once to the proposition that wherever it is asserted on the one hand that a municipality is bound by a contract to perform a particular act and the municipality denies that it is liable under the contract to do so, thereby an impairment of the obligations of the contract arises in violation of the Constitution of the United States. But this amounts only to the contention that every case involving a controversy concerning a municipal contract is one of Federal cognizance, determinable ulitmately in this court. Thus to reduce the proposition to its ultimate conception is to demonstrate its error."

The holding of the *St. Paul case, supra*, is stated at Page 151 as follows:

> "As it is apparent from the foregoing considerations that, even conceding the contract to be as contended for, no legislative act is shown to exist, from the enforcement of which an impairment of the obligations of the contract—within the purview of the Constitution— did or could result, it follows that the records involves solely an interpretation of the contract, and, therefore, presents no controversy within the jurisdiciton of this court.
>
> "Dismissed for want of jurisdiction."

As the contract was intrepreted by the trial court, it was the intention of the parties that Appellant should receive a lease to the land for 75 years and furnishing of utilities including streets, sidewalks, etc. to the lease premises, and that Appellee would receive annual ground rent, the advantage of a housing development, and the benefits of a substantial source of revenue for taxes on the

improvements over a long period of years. Appellant has made no allegation that any ordinance or State action has deprived Appellant of the 75-year lease to the land and furnishing of utilities for which Appellant bargained. A decision along the lines sought by Appellant would have in fact impaired the obligations of this contract to the detriment of Appellee.

QUESTION OF EQUAL PROTECTION OF THE LAWS

At no time has Appellant attempted to show legal authority for the proposition that a long term leasehold is not a taxable interest in real property. At no time during the trial of this matter did the Appellant attempt to show either that there were *no* other holders or leasehold interests which had previously been included on the personal property tax roll and that the section of the ordinance complained of applied to Appellant alone, or that there were other holders of leasehold interest whose property was not shifted to the real estate tax roll and therefore became exempt. Rather Appellant, without showing that a long term leasehold interest in real estate is not in fact realty, has claimed that Appellant should be treated just as owners of personal property because the contract provided that its leasehold interest should be included on the personal property tax roll. If in fact such a leasehold interest is realty, then exemption of Appellant's leasehold interest from taxation because of the contract agreement and the repeal of personal property taxes would have in fact violated the constitution by denying equal protection of the laws to all other real property taxpayers.

SUMMATION

The obligations of the contract between Appellant and Appellee have not been impaired, but rather have been enforced. Equal protection of the laws has not been denied Appellant because its leasehold interest is treated in the same manner as other real property. Appellant has shown no basis for jurisdiction of this court either on appeal or for certiorari. Therefore, this appeal should be dismissed.

Respectfully submitted,

BENJAMIN T. DELAHAY, JR.
City Attorney
Attorney for Appellee